



POLICE DEPARTMENT

November 9, 2011

MEMORANDUM FOR: Police Commissioner

Re: Detective Michael Naus  
Tax Registry No. 914387  
101 Precinct Detective Squad  
Disciplinary Case No. 2011-3444

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The above-named member of the Department appeared before me on October 4, 2011, charged with the following:

1. Said Detective Michael Naus, while assigned to the 101st Precinct Detective Squad, on or about August 21, 2010, did wrongfully and without just cause utilize one or more Department computers to make inquiries unrelated to the official business of the Department or the City of New York, in that he improperly utilized a Department computer to ascertain information for his personal use.

P.G. 219-14, Page 1, Paragraph 2 – DEPARTMENT COMPUTER SYSTEMS  
DEPARTMENT PROPERTY

2. Said Detective Michael Naus, while assigned to the 101st Precinct Detective Squad, on or about August 21, 2010, did wrongfully and without just cause divulge information obtained from one or more Department computers without a valid law enforcement purpose.

P.G. 219-14, Page 1, Paragraph 3 – DEPARTMENT COMPUTER SYSTEMS  
DEPARTMENT PROPERTY

The Department was represented by Javier Seymore, Esq., Department Advocate's Office, and Respondent was represented by Philip Karasyk, Esq.

Respondent, through his counsel, entered pleas of guilty to the subject

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charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation hearing record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded guilty, is found Guilty.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent testified on his own behalf and called Lieutenant Gemma Masterson to testify as a character witness.

Respondent

Respondent, who has been assigned to the 101 Precinct Detective Squad (PDS) since 2003, testified that he has made 380 arrests and that he has never previously been the subject of Departmental discipline, not even for a minor violation. He is the father of five children who are all under 17-years-old.

Respondent testified that on August 21, 2010, he learned that a professional football player (the player) had been arrested by members of this Department for Driving While Intoxicated. He admitted that he used his Department-assigned personal computer code to enter the Department's computer database to make a computer inquiry unrelated to the official business of the Department in that he accessed the photo manager application to view the arrest photo of the player. While the arrest photo of the player was displayed on his computer screen, he used his personal cell phone to take a picture of

the arrest photo and he forwarded this picture to the cell phone of his friend Person A Person A, who is employed by a bank.

Respondent testified that he "didn't think much" about what he had done at the time he sent the picture to Person A because he was certain that Person A would not forward the arrest photo of the player to anyone else.<sup>1</sup> Respondent testified that he now realizes that by doing what he did he embarrassed himself, his family and the Department.

On cross-examination, Respondent testified that he is aware that only the Deputy Commissioner Public Information (DCPI) is authorized to release arrest photos and he agreed that by sending the arrest photo of the player to his friend Person A he had undermined the function of DCPI.

Lieutenant Gemma Masterson

Lieutenant Masterson, who is assigned to the 101 PDS, supervises Respondent. She testified that Respondent is a hardworking, diligent detective who is "honest to a fault."

She testified that as the 101 PDS's "top performer" and "go to guy," Respondent is routinely assigned to the unit's most serious cases including homicide investigations and shootings.

Masterson testified that Respondent's misconduct of using his Department-assigned computer code to access an arrest photo and his misconduct of forwarding the photo to a civilian constituted an aberration from his normal on-duty conduct.

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<sup>1</sup> The Assistant Department Advocate stipulated that Person A's cell phone records, obtained during the Department's investigation, indicate that he did not send the photo to anyone.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to the New York City Housing Authority Police Department on August 30, 1993. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

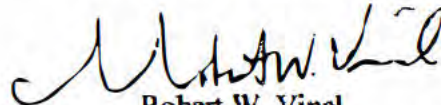
Respondent has pleaded guilty to having wrongfully utilized a Department computer in that he improperly utilized a Department computer to ascertain information for his personal use which was unrelated to the official business of the Department. Respondent has also pleaded guilty to having wrongfully divulged the information he obtained from the Department computer to a civilian without a valid law enforcement purpose.

It is not disputed that a computer use audit report prepared by the Department's Management Information Systems Division (MISD) revealed that 19 members of the service (MOS) had accessed the player's arrest photo on August 21, 2010, and that all of the other MOS who accessed the player's arrest photo were issued Command Disciplines. Also, as Respondent's counsel noted, the fact that Respondent used his own Department-assigned computer code to access the arrest photo of the player shows that Respondent's action was thoughtless rather than deceptive because he made no attempt to hide his identity. Respondent's counsel also asserted that Respondent was the only MOS who came forward to admit that he had accessed the player's arrest photo.



The Assistant Department Advocate recommended that Respondent forfeit 13 vacation days. However, having examined the facts and circumstances surrounding Respondent's misconduct, and having given consideration to Lieutenant Masterson's testimony; Respondent's own candid and contrite testimony; Respondent's outstanding performance evaluations; Respondent's Department Recognition Summary; and Respondent's lack of any prior disciplinary record, I believe that a slightly lesser penalty is warranted. Therefore, I recommend that Respondent forfeit ten vacation days.

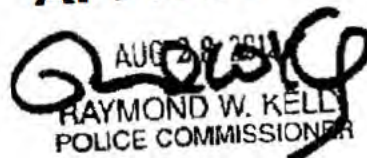
Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

**APPROVED**



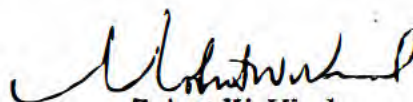
AUG 28 2014  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
DETECTIVE MICHAEL NAUS  
TAX REGISTRY NO. 914387  
DISCIPLINARY CASE NO. 2011-3444

Respondent received an overall rating of 5.0 on his most recent annual performance evaluation, 4.5 on his 2009-2010 evaluation, and 4.5 on his 2008-2009 evaluation. He has been awarded six Meritorious Police Duty medals and two Excellent Police Duty medals. [REDACTED] He has no formal disciplinary record and no monitoring records

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner - Trials